

EP DETERMINATIONS QUALITY ASSURANCE BULLETIN

FY-2002 No. 2

Date: January 07, 2002

INTERESTED PARTY COMMENTS

A plan sponsor is required to give notice to interested parties prior to submission of an application for determination of a plan's qualified status. Interested parties are defined in Reg. 1.7476-1(b) and generally include all present employees of the employer who are eligible to participate in the plan and all other present employees of the employer whose principal place of employment is the same as that of the employees eligible to participate in the plan. In cases involving plan terminations, interested parties also include former employees with accrued benefits under the plan and beneficiaries of deceased former employees with vested benefits under the plan.

Interested parties may submit their comments to the Department of Labor (DOL) or directly to the Internal Revenue Service (the Service). If an interested party or group of interested parties submits their comments to the DOL, the interested parties may request the DOL to comment on the application to the Service. The DOL then forwards the interested party comments to the Service with comments of its own, if appropriate.

Interested party comments should be associated with the determination application as soon as administratively possible and should be considered by the Service in the determination as to the qualified status of the plan. Interested party comments are not entitled to confidentiality. The Code of Federal Regulations (CFR) specifically provides that all interested party comments will be made available to the plan sponsor. See Reg. 601.201(o)(5)(v).

The purpose of this bulletin is to reiterate and clarify the procedures in Internal Revenue Manual (IRM) section 7.4.1.2.7.2 regarding the processing of determination applications when interested party comments have been received. It does not address the content of notices to interested parties, nor does it address the deadline for submitting comments either directly to the Service or to DOL. For additional guidance on interested party comments, please review the following:

IRM 7.4.1.2.7: Interested Party Concerns

IRM 7.4.1.2.7.1: Notice Procedures

IRM 7.4.1.2.7.2: Interested Party Comments

CFR 601.201(o): Employee Trusts or Plans

IRC 7476: Declaratory Judgements Relating To Qualification of Certain Retirement Plans

Reg. 1.7476: Interested Parties and Notice

Rev. Proc. 2001-6, Part II: Interested Party Notice and Comment (revised annually)

Procedures:

Upon receipt of a determination application containing interested party comments or the subsequent association of interested party comments with a determination application currently in process, the specialist will acknowledge the receipt of the comment(s) as required by the IRM. The specialist will mail the Acknowledgement of Receipt Letter (copy accompanying this QAB) to each interested party or the representative if the interested party comments have been consolidated.

In accordance with the IRM, the specialist should consider all comments received in arriving at a decision as to the qualified status of the plan. The specialist should note on the specialist's workpapers or on Form 5621 the effect of the comments on the specialist's final determination.

If the specialist's determination is favorable, the specialist will prepare the favorable determination letter. The specialist will also prepare Pattern Letter 1935 (copy accompanying this QAB) for each interested party (or their representative) that submitted comments. Since all determination applications involving interested party comments are subject to mandatory review, the favorable determination letter and Pattern Letter 1935 will remain in the case file to be ultimately mailed by the Quality Assurance Section (QAS).

The IRM provides that Pattern Letter 1936 should be used to respond to comments received by interested parties on standardized plans. This letter should only be used in the event that comments are received on a standardized plan for which the plan sponsor did not file an application for a determination letter. If a determination letter was filed for a standardized plan, Pattern Letter 1935 (copy accompanying this QAB) should be used.

If the determination is favorable, the specialist will also prepare Pattern Letter 1939 (copy accompanying this QAB) to notify the plan sponsor that interested party comments were received. Pattern Letter 1939 will remain in the case file and will be mailed by QAS at the same time that Pattern Letter 1935 is mailed.

If the determination is unfavorable, the specialist will follow the normal adverse determination procedures. As with a favorable determination, the specialist will also prepare Pattern Letter 1935 for each interested party (or their representative). The final adverse determination letter and Pattern Letter 1935 will be mailed by either the Appeals division, if an appeal is filed by the plan sponsor, or by QAS if no appeal is filed.

As noted on Pattern Letter 1935, the interested party has the right to petition the tax court for a declaratory judgement if the interested party does not agree with the determination, whether it favorable or unfavorable. Thus, it is important that the case file contain adequate documentation to support the specialist's determination as well as adequate documentation regarding the effect of the interested party comments.

To facilitate retrieval of the case file in the event that the interested party files a petition, QAS will retain the case file for a period of at least 92 days (the time within which a petition must be filed). The case file will not remain in open status on EDS, as the case will have been closed upon the favorable determination letter being approved by QAS.

As noted on page one of this bulletin, interested party comments will be made available to the plan sponsor. If a sponsor, upon receipt of Pattern Letter 1939, contacts the agent to request copies of the comments, the agent will contact QAS to obtain copies of the comments.

The IRM provides that the DOL, PBGC, and interested parties will be afforded an opportunity to discuss the written comments previously submitted. *CAUTION:* When dealing with interested parties, care should be taken to avoid improper disclosures to the interested party. Information regarding the interested party comments can be solicited from the interested party. However, actions taken with regard to the determination application should not be disclosed to the interested party. The interested party will receive notification of the Service's final determination when Pattern Letter 1935 is issued.

Interested parties are not entitled to confidentiality, as stated on page one. Anonymous comments will not be considered interested party comments. If an interested party contacts the specialist and indicates that he wishes to submit anonymous comments, the specialist should explain the non-confidentiality aspect and also advise the party that we will be unable to notify him of our final decision on the application submitted. While we will not provide a copy of the anonymous comments to the employer, it is still possible that the employer may view the comments if the application is subject to public disclosure. This bulletin does not attempt to address this issue, so the specialist should contact a disclosure specialist if the situation arises.

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Date:

**Department of the Treasury
Internal Revenue Service
Tax Exempt/Government Entities**

A!

Name of Plan:

Plan Number:

Employer Identification Number:

Person to Contact:

EPEOSpec

Telephone Number:

MyPhone

Dear Sir or Madam:

Thank you for your comments concerning this plan. Enclosed is a copy of a final determination letter that was issued for this plan.

Interested parties who make comments on a determination letter request may petition the U.S. Tax Court for a declaratory judgment regarding the determination if they disagree with the determination. If you wish to file such a petition, it must be made before 92 days after the date this letter was mailed to you.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz
Director, EP Rulings & Agreements

Enclosure:
Final Determination Letter

Letter 1935

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Date:

**Department of the Treasury
Internal Revenue Service
Tax Exempt/Government Entities**

A!

Name of Plan:

Plan Number:

Employer Identification Number:

Person to Contact:

EPEOSpec

Telephone Number:

MyPhone

Dear Sir or Madam:

Thank you for your comments concerning this plan. We have considered them and find that they do not have an adverse effect on the plan's qualification for favorable tax treatment. The employer may continue to rely on our favorable opinion notification letter issued to the plan sponsor.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz
Director, EP Rulings & Agreements

Enclosure:
Final Determination Letter

Letter 1936

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Date:

**Department of the Treasury
Internal Revenue Service
Tax Exempt/Government Entities**

A!

Name of Plan:

Plan Number:

Employer Identification Number:

Person to Contact:

EPEOSpec

Telephone Number:

MyPhone

Dear Sir or Madam:

After you adopted this plan, we received comments from interested parties about the plan's qualification.

We have determined that the comments do not have an adverse effect on the plan's qualification for favorable tax treatment.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz
Director, EP Rulings & Agreements

Letter 1939



Date:

**Department of the Treasury
Internal Revenue Service
Tax Exempt Government Entities**

A!

Name of Plan:

Plan Number:

Employer Identification Number:

Person to Contact:

EPEOSpec

Telephone Number:

MyPhone

Dear Sir or Madam:

Thank you for your comments concerning the above named plan. Your comments were submitted timely and will be considered in the determination process for this plan.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz
Director, EP Rulings & Agreements